

STATE OF CALIFORNIA

ELECTRICITY OVERSIGHT BOARD

EMERGENCY PUBLIC MEETING

TUESDAY, JANUARY 23, 2001

CALIFORNIA STATE CAPITOL

ROOM 4203

SACRAMENTO, CALIFORNIA

11:00 A.M.

REPORTED BY:

SANDRA VON HAENEL
CSR No. 11407

1 APPEARANCES

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3 ELECTRICITY OVERSIGHT BOARD MEMBERS:

4 Ms. Kari Dohn, Chairperson
5 Senator Debra Bowen, Member
6 Mr. Bruce G. Willison, Member (via telephone)

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7 ELECTRICITY OVERSIGHT BOARD STAFF:

8 Mr. Gary C. Heath, Executive Director
9 Mr. Erik N. Saltmarsh, Chief Counsel
10 Mr. Thomas Flynn

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11 OTHERS PRESENT:

12 Mr. Lawrence Lingbloom
13 Mr. Joseph Lyons
14 Mr. Charles Robinson
15 Mr. John Rozsa

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1 SACRAMENTO, CALIFORNIA

2 TUESDAY, JANUARY 23, 2001, 11:00 A.M.

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4 CHAIRPERSON DOHN: Good morning. We seem not to have
5 our power on our mics this morning, so I'm just going to
6 speak loud.

7 Bruce, can you hear us?

8 MR. WILLISON: I can hear you loud and clear.

9 Thank you. Good morning.

10 CHAIRPERSON DOHN: We'll just all speak up.

11 I'd like to bring this meeting to order. And we have
12 on the phone Bruce Willison.

13 Thank you for joining us, Bruce.

14 MR. WILLISON: Good morning.

15 CHAIRPERSON DOHN: Good morning.

16 Senator Bowen is with us, and with her, Mr. Lawrence
17 Lingbloom. We have Gary Heath with us today,
18 Mr. Erik Saltmarsh, and we have John Rozsa.

19 Thank you for joining us, and particularly thank you
20 for joining us on such late notice, short notice.

21 First, I'd like to give my, and particularly express
22 the Governor's, extreme appreciation to Mr. Michael Kahn,
23 who has been serving very ably as chair of the EOB, and
24 recognize all of his energy, his enthusiasm, his very
25 creative thinking, and his fine counsel to the Governor.

1 So thank you, Michael, even though you're not here
2 with us today.

3 As you know, on January 8th, the Governor asked the
4 Legislature to take a number of steps to address
5 California's energy situation. And the first step that he
6 asked them to take was to restructure the governing board of
7 the ISO, to make the ISO no longer the stakeholder board
8 that it has been, and to put in its place an independent
9 body to govern the ISO.

10 In response to the Governor's request,
11 Assemblyman Keeley, with Senator Bowen as a principal
12 co-author, introduced AB 5, which was immediately passed by
13 both houses and signed by the Governor into law on
14 January 18th.

15 Upon signing AB 5, the Governor announced four of the
16 five members of the new ISO governing board. And today, EOB
17 will be meeting to consider and possibly act on these
18 appointments.

19 Before turning to the agenda, I'd like to have the
20 Board's chief counsel, Mr. Saltmarsh, explain the basis for
21 today's emergency meeting.

22 MR. SALTMARSH: The California Open Meeting Act
23 generally requires of state agencies, including this agency,
24 a ten-day notice of any meeting in which the public body
25 would take an action. There are several exceptions set

1 forth in the law for meeting under conditions of emergency.

2 After reviewing the request from the Governor's Office
3 for prompt action on the appointments, together with the
4 circumstances that caused the Governor to declare by
5 proclamation a state of emergency based on the electricity
6 crisis and, indeed, the justification that the Legislature
7 found in making the emergency enactment of AB 5, we have
8 prepared a resolution for adoption by the Oversight Board
9 that finds these circumstances.

10 And it is the opinion of counsel for the Board that
11 these circumstances can justify a meeting under a shorter
12 notice under the California Open Meetings law.

13 For persons in the audience, there should be copies of
14 the proposed resolution up at the front here on the table.
15 This, for the members, is found under Tab 1 in the binder
16 that should be before you.

17 MR. WILLISON: And, Madam Chairperson, I would move
18 that resolution.

19 CHAIRPERSON DOHN: I'll second that.

20 Any discussion?

21 All in favor?

22 MR. WILLISON: Aye.

23 CHAIRPERSON DOHN: Aye.

24 Opposed?

25 The proposed motion has been carried.

1 Before we turn to the agenda, I'd like to ask the
2 other members if they have any opening comments.

3 Mr. Willison?

4 MR. WILLISON: None here, except perhaps just to echo
5 your comments about the contributions of Michael Kahn and
6 his chairmanship.

7 CHAIRPERSON DOHN: Thank you.

8 I believe our microphones are working now.

9 Mr. Heath, would you please present today's agenda and
10 report on the current system conditions.

11 MR. HEATH: Thank you, Madam Chair, members.

12 The item for action and consideration this morning is
13 the pending appointments to the ISO governing board,
14 appointments made by the Governor. The Governor is asking
15 for confirmation of those.

16 The list includes Mr. Michael Kahn, Ms. Maria
17 Contreras-Sweet, Mr. Michael Florio, Mr. Carl Guardero, and
18 Mr. Tal Finney.

19 In your binders, members, there are brief résumés on
20 each of those individuals. And that is the action that is
21 being requested this morning. It's for confirmation of
22 their appointments.

23 CHAIRPERSON DOHN: I believe it's Carl Guardino,
24 Mr. Heath.

25 MR. HEATH: Thank you very much.

1 CHAIRPERSON DOHN: Is there any discussion to be had
2 on the motion?

3 MR. WILLISON: Madam Chairperson, I would move the
4 names that have just been submitted.

5 CHAIRPERSON DOHN: I would second that.
6 Any discussion?

7 SENATOR BOWEN: Thank you.

8 Under normal circumstances, I would ask the Board
9 members to appear and to have had a discussion about the
10 direction that we might set for the ISO, what we might
11 expect and what the goals and so forth might be of these
12 board members.

13 Given the current state of emergency and the kind of
14 emergency, I did not ask the Board to do that. But I just
15 want to be clear that I would be interested in continuing --
16 in having the answers for some of those questions in a
17 different forum.

18 CHAIRPERSON DOHN: We have a motion on the floor.
19 All in favor?

20 MR. WILLISON: Aye.

21 CHAIRPERSON DOHN: Aye.
22 Opposed?

23 The motion, then, is carried.

24 Okay.

25 MR. HEATH: The next item on the agenda, Madam Chair,

1 members, is the direction to the California ISO to revise
2 its articles of incorporation and bylaws in accordance with
3 Section 337 of the Public Utilities Code in regards to
4 AB 5 -- 5X. I'm sorry. AB 5X. One of the X files.

5 Anyway, that would be a direction that we would be
6 asking the members to take up as the next item.

7 CHAIRPERSON DOHN: And can you just quickly explain a
8 little bit behind that --

9 MR. HEATH: Sure.

10 CHAIRPERSON DOHN: -- for the new person here.

11 MR. HEATH: Certainly. I'll ask counsel to do that.

12 MR. SALTMARSH: The Independent System Operator is
13 incorporated as a California public benefit corporation.
14 Consistent with most such corporations, it conducts the
15 day-to-day business of particularly the internal management
16 and governing board of directors pursuant to bylaws that
17 have been adopted by the corporation.

18 Those bylaws generally reflect, among other things,
19 the mechanisms by which the governing board itself is
20 structured and replaced, et cetera. And so there are
21 provisions in the bylaws that they've been using to date
22 that comply with what has been in historic practice and the
23 historic state of the law.

24 In enacting AB 5X, the Legislature made specific
25 reference to the fact that those corporate documents should

1 be amended to have consistency with the current standard in
2 law.

3 The motion that is before the Electricity Oversight
4 Board today would direct the Independent System Operator to
5 undertake review of its corporate documents, and report back
6 to the Electricity Oversight Board on revisions that would
7 need to be made in order to bring those into conformance
8 with the law.

9 CHAIRPERSON DOHN: And does ISO have any comments on
10 that?

11 MR. ROBINSON: Good morning.

12 My name is Charles Robinson. I'm the vice president
13 and general counsel of the ISO.

14 We have already begun review of our articles and
15 bylaws, and I believe that we will be in a position to
16 present something to the new board either tomorrow or at a
17 meeting to be scheduled in the future.

18 CHAIRPERSON DOHN: Any other questions, comments?

19 Do we have a motion?

20 MR. WILLISON: Madam Chairperson, then I would move
21 the resolution as presented.

22 CHAIRPERSON DOHN: Second.

23 All in favor?

24 MR. WILLISON: Aye.

25 CHAIRPERSON DOHN: Aye.

1 All opposed?

2 The motion is passed.

3 MR. HEATH: The final item that we want to bring to
4 your attention, Madam Chair and members, has to do with
5 another provision of AB 5X. 352.5 of the Public Utilities
6 Code requires the ISO to post on the Internet its listing of
7 power plants that are out. These are planned or unplanned
8 outages of power plants. And I believe we had, as early as
9 today, that posting will begin on Thursday, which would be,
10 I believe, the 25th.

11 MR. ROBINSON: There is one caveat to that. We have
12 sought some advice from our outside counsel regarding
13 whether or not there would be any issues under the ISO's
14 tariff. The recommendation was that we post a notice to
15 market participants regarding our intent to post the listing
16 on Thursday. And that is our intent.

17 SENATOR BOWEN: When this is completed, I have a
18 follow-up on that.

19 CHAIRPERSON DOHN: And, I believe -- are we just
20 discussing this item?

21 MR. HEATH: Yes. This is a discussion only. Although
22 I think there's a clear signal we need to have -- this needs
23 to happen as soon as possible -- that posting -- as required
24 by the statute.

25 CHAIRPERSON DOHN: Yes, Senator Bowen.

1 SENATOR BOWEN: Mr. Robinson, your comment actually
2 leads to the question I next wanted to ask.

3 The state law now requires the ISO to do certain
4 things: to have a board that's constituted in a certain
5 manner and so forth.

6 Certainly, the last order issued by FERC with regard
7 to this matter could be read as conflicting in some ways
8 with the state law. Although, in my view, the FERC's
9 apparent approval of SB 96 makes their order of December
10 internally inconsistent.

11 Nonetheless, I am interested to know how the ISO plans
12 to resolve issues concerning the conflict of jurisdiction
13 between the state and the Federal Energy Regulatory
14 Commission.

15 MR. ROBINSON: I think I can speak on behalf of the
16 management.

17 The plan was to discuss that issue with our new board
18 during a meeting tomorrow, and request direction from the
19 new board as to how they would like to proceed.

20 I would agree with you that at least on some reading
21 of the FERC order and some reading of the statute that was
22 recently passed, that there may be a conflict between state
23 and federal law.

24 SENATOR BOWEN: Thank you.

25 CHAIRPERSON DOHN: Then I believe the last item is

1 calling for any public comments.

2 MR. ROBINSON: Thank you.

3 CHAIRPERSON DOHN: Do we have any public comments?

4 If not, then do we have a motion to adjourn?

5 MR. WILLISON: So moved.

6 CHAIRPERSON DOHN: Second.

7 All in favor?

8 MR. WILLISON: Aye.

9 CHAIRPERSON DOHN: The meeting is adjourned.

10 Thank you.

11 (At 11:26 a.m. the meeting is adjourned.)

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REPORTER'S CERTIFICATE

I, SANDRA VON HAENEL, certify that I was the official Court Reporter for the proceedings named herein, and that as such reporter, I reported in verbatim shorthand writing the named proceedings;

IN WITNESS WHEREOF, I have subscribed this
certificate at Sacramento, California, on the 24th day of
January, 2001.